McCURDY, COUNTY TREASURER OF OSAGE COUNTY, OKLAHOMA, ET AL. *v.* UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

No. 685. Argued January 18, 1918.—Decided March 4, 1918.

Whether, in view of the limitations of Art. IV, § 3, and the Ninth and Tenth Amendments of the Constitution, Congress has power to exempt from state taxation land purchased for a tribal Indian which when acquired was part of the mass of private property subject to the state taxing power and jurisdiction, is a substantial constitu-

still have his homestead and his share in valuable undivided oil, gas and coal rights; and the legally incompetent, his surplus lands in addition. There is nothing in the act or in the facts to which it applies that indicates a purpose to extend governmental control to property in which released funds may be invested. And there are in both the Act of 1906 and in that of 1912 provisions which show that Congress intended to restrict the tax exemption. By § 2 of the Act of 1906 the surplus lands became taxable after three years, even if they remained inalienable. By § 7 of the Act of 1912 both the lands and funds of allottees or their heirs are protected against claims arising prior to competency, inheritance or removal of restrictions; but it is expressly provided "That nothing herein shall be construed so as to exempt any such property from liability for taxes."

The regulations issued under date of June 26, 1912, afford no support to the Government's contention. They provide, among other things, that:

(*a*) "One who has not received a certificate of competency, but who has made good use of all moneys paid to him and has properly used the lands and rentals under his control belonging to his minor children may be considered competent to handle his trust funds."

(*b*) (In case of adults neither aged, physically disabled, nor incompetent to a degree requiring legal guardianship, the applicant must agree) "to abide by a stipulation in the claim that the money is to be deposited in bank to his credit and expended under the supervision of the superintendent, subject to instructions from the Indian Office, if the Secretary of the Interior so directs."

Like the act under which they are framed, these regulations contemplate supervision of the expenditure of money, not control of the property, if any, for which the money is expended. They tend to confirm the contention of the appellants that after the money is paid out of the bank it

and property in which it may be invested are to be free from any restriction. Under the Act of 1906, the Secretary of the Interior when applied to for a certificate of competency was confronted with serious alternatives. If he issued the certificate, all the allottee's surplus lands—about 495 acres [1]—would at one time be freed from restrictions on alienation and become subject to disposition by him without governmental control. If the Secretary refused to issue the certificate, the allottee would (unless the certificate were granted later) remain, until the end of the twenty-five year period, in the enjoyment of the income merely; and at the end of that period, he or his heirs though unaccustomed to the control of property, would get absolute dominion at one time over the (a) homestead, (b) surplus lands, (c) the trust fund ($3,928.50),[2] and (d) his share of the interest in the oil, gas, coal and mineral rights. The Act of 1912 made possible the release of parts of the trust fund from time to time. The risks to be incurred at any one time could be made quantitatively as small as the Secretary of the Interior might deem advisable; and by the regulations the risk was reduced in degree, by virtue of the requirement that the money must be "deposited in bank and expended under supervision of the superintendent, subject to instructions from the Indian Office, if the Secretary of the Interior so directs." The policy of education and development through the bank account had been tried and found promising.[3] The regulations greatly extended

[1] Report of Com. of Indian Affairs (1912), p. 63.

[2] Report of Com. of Indian Affairs (1910), p. 47.

[3] Report of the Com. of Indian Affairs (1912), pp. 64, 66: "As the keynote of Indian progress has been individualism, perhaps the most effective general action taken during the fiscal year was the sending of a personal letter to each superintendent handling individual Indian funds in order to impress upon his mind a most important consideration—that the funds of an able-bodied Indian should be handled in such a way as not to weaken his moral stamina as a man."

the field of operation by providing that one legally incompetent might get such release where he had made good use of the moneys theretofore paid him or of the lands under his control. It is education through the responsibility for spending, not the property purchased with released moneys, which constitutes the instrumentality employed by the Government in fitting the individual Osage Indian to take his full part as a citizen of the United States.

Furthermore, in the case at bar it is not shown that the money released from the trust was invested directly in property restricted as to alienation. Apparently Panther's money had been released six months before the deed to him was executed and was used to pay for a conveyance of the land to Brenner, as trustee for Robert and Emma Panther. What the terms of the trust were, does not appear. But there is nothing in the record to indicate that a restriction upon the alienation of the land was among them or that the Secretary of the Interior expressly reserved control over the property or its proceeds. It may well be that the Commissioner of Indian Affairs then believed that an ordinary trust of the property for a short period would best advance the interests of Panther. It is consistent with the facts shown that the restriction upon alienation inserted in the deed was not a continuation of control reserved by the Secretary of the Interior, but a bringing under his control of a part of Panther's estate theretofore freed. In this respect and others the present case differs from *United States* v. *Thurston County*, 143 Fed. Rep. 287, much relied upon by the Government. There is also a clear distinction between the present case and those like *United States* v. *Rickert*, 188 U. S. 432, where it was sought to tax property, the legal title of which was in the United States and which was held by it for the benefit of Indians.[1]

[1] See *United States* v. *Pearson*, 231 Fed. Rep. 270.

263. Counsel for Plaintiff in Error.

While an Indian is still a ward of the Nation, there is power in Congress even to reimpose restrictions on property already freed; *Brader* v. *James*, decided this day, *ante*, 88; but Congress did not confer upon the Secretary of the Interior authority to exercise such power under the circumstances of this case or to give to property purchased with released funds immunity from state taxation.

The decree is reversed with directions to dismiss the bill.

Reversed.